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Substances Control

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

Plaintiff,

v.

**ESTATE OF REITMAN, ex rel. Audrey Berkson,
Executrix; AUDREY BERKSON, Executrix**
Defendants.

ORIGINAL
FILED
MAY 29 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

007-02779 WDB

**COMPLAINT FOR
RECOVERY OF RESPONSE
COSTS
(Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980,
42 U.S.C. §§ 9601 - 9675)**

Plaintiff, California Department of Toxic Substances Control, alleges as follows:

STATEMENT OF THE ACTION

1. The California Department of Toxic Substances Control ("Department") makes a claim for relief under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613 (1986) for the recovery of response costs related to a release or threatened release of

[COMPLAINT FOR RECOVERY OF RESPONSE COSTS] -

1 hazardous substances from a plating site located on Pearmain Street in Alameda County,
2 California ("Pearmain Site" or "Site"). The Pearmain Site encompasses three parcels of property
3 (Assessor's Parcel Numbers 045-5243-001, 045-5243-002-01, and 045-5243-005-01,
4 corresponding to 10301 Pearmain Street, 10319 Pearmain Street, and 10323 Pearmain Street) and
5 consists of two buildings and a fenced storage yard.

6
7 VENUE AND JURISDICTION

8 2. This Court has jurisdiction over this CERCLA claim pursuant to 28 U.S.C.
9 section 1331 and 42 U.S.C. section 9613(b), and pursuant to 28 U.S.C. section 1391(b) because
10 the release or threatened release of hazardous substances into the environment occurred in this
11 District.

12 PLAINTIFF

13 3. Plaintiff Department is a state agency organized and existing under state law. The
14 Department is a state agency responsible under state law for determining whether there has been
15 a release or threatened release of a hazardous substance into the environment, and whether
16 responsive action is necessary.

17 DEFENDANTS

18 4. Defendant Audrey Berkson, an individual, is the Executrix of the Estate of
19 Abraham Isidore Reitman ("Estate of Reitman" or "Reitman Estate"), which owned the Pearmain
20 Site at the time of a release or threatened release of hazardous substances at the Site.

21 5. Defendant Estate of Reitman owned the Pearmain Site at the time of the release or
22 threatened release of hazardous substances at the Site.

23 FACTUAL BACKGROUND

24 6. The Pearmain Site is located in a mixed residential/industrial area of Oakland,
25 California. The K&L Plating Company ("K&L") operated as a metal plating facility at the
26 Pearmain Site for approximately four years, until it was shut down in response to an order issued
27 by the Alameda Superior Court for numerous compliance problems with local, state, and federal
28 environmental laws.

7. The Estate of Reitman acquired the Pearmain Site after decedent Abraham

1 Reitman's death on January 12, 1991 and owned the property until 2001.

2 8. While operational, the K&L metal plating facility generated zinc plating sludge;
3 lead and chromium dust; copper, zinc, and nickel cyanide waste streams; waste containing
4 sodium hydroxide; and spent hydrochloric, boric, and nitric acids. Sludge was generated from an
5 on-site plating bath solution treatment unit that separated, flocculated, and neutralized waste
6 streams from the plating operation before discharge to the sanitary sewer. The sludge was
7 dewatered, compacted, and drummed on-site before transport for off-site disposal.

8 9. In May 1997, the Department inspected the K&L facility and noted hazardous
9 waste violations, including problems with equipment maintenance, training, and hazardous waste
10 storage.

11 10. Based on this inspection, the Department filed a complaint with the Alameda
12 Superior Court on June 26, 1997. On July 16, 1997, the Court ordered K&L to cease business
13 operations and to properly dispose of all chemicals, materials, and other substances from the Site.

14 11. On September 19 1997, the Department issued an Imminent and Substantial
15 Endangerment Determination for the Pearmain Site, thereby enabling the Department to conduct
16 appropriate response actions.

17 12. On September 30, 1997, the United States Environmental Protection Agency
18 ("EPA") responded to a hydrochloric acid leak from a 1,500 gallon tank inside the bermed area
19 of the K&L facility. EPA ordered an emergency response, which consisted of the removal and
20 disposal of approximately 66,000 gallons of acids, bases, cyanide solutions, wastewater, and
21 other liquids.

22 13. On March 25, 1998, the Department issued an Order to Fence and Post, Docket
23 #FP 97/98-003, to K&L and its owner, Robert McSkimming. It also issued an Order to Fence
24 and Post, Docket #FP 97/98-004, to Audrey Berkson, Executrix of the Estate of Reitman, which
25 owned the property at the time.

26 14. In December 1998, the Department's contractor removed all the vats, tanks,
27 drums, and miscellaneous debris remaining at the Pearmain Site, at a cost of approximately
28 \$180,000. At that time, soil, groundwater, and wipe samples from the facility were collected to

1 assess the presence of contamination. Sampling results identified residual metals contamination
2 on the walls and floors of the facility; low levels of arsenic and metals in the subsurface soil, and
3 variable levels of metals in the groundwater.

4 15. The Department developed a Removal Action Workplan ("RAW") for the Site to
5 address the residual contamination of structures, debris, and soil at the Pearmain Site. A Public
6 Participation Plan was finalized in October 1999, and a draft RAW was made available for public
7 review and comment in the spring of 2000.

8 16. In June 2000, the Department finalized the RAW. The final RAW was prepared
9 in a manner consistent with EPA's *Guidance on Conducting Non-Critical Removal Actions*
10 *Under CERCLA*, which contains the process for developing an Engineering Evaluation/Cost
11 Analysis in compliance with the National Contingency Plan.

12 17. The Department's contractor began implementation of the RAW in August 2000.
13 From August 2000 to November 2000, the contractor conducted decontamination activities,
14 including high-pressure triple rinsing of the floors and walls of the structures; removal of debris;
15 collection of confirmation samples from the floors and walls; and collection of soil samples
16 beneath the most deteriorated concrete in the facility, to assess the underlying soil. Cleanup
17 activities resulted in filling one 20-cubic-yard bin with concrete and debris, seven 55-gallon
18 drums with debris and dust, and a 6,000 gallon tank of decontamination water for subsequent
19 disposal. All cleanup activities were conducted using state funds.

20 18. Cleanup activities did not include scarification of the concrete surfaces of the
21 structures. Confirmation sampling wipes of the structures showed that residual metals
22 contamination, including cadmium, copper, chromium, nickel, lead, zinc, and cyanide, remained
23 on the floors and walls. Soil sampling results indicated that subsurface soil beneath the
24 deteriorated concrete was not contaminated.

25 19. In February 2001, the Estate of Reitman sold the 10323 Pearmain Street parcel to
26 the current owners, Bennett Christopherson, Elin Christopherson, and Hans-Juergen Bergmann
27 ("Current Owners"). The Current Owners acquired the remaining two parcels – 10301 Pearmain
28 Street and 10319 Pearmain Street – through a foreclosure sale in February 2002. They acquired

1 all three properties with the full knowledge that the properties were contaminated, and that the
2 Department had incurred costs to investigate the contamination and to perform removal and
3 remedial actions at the Site.

4 20. In the fall of 2002, the Department and its contractors began discussing options to
5 address the remaining contamination at the Pearmain Site. The Department's contractor
6 submitted a workplan in spring 2003 for additional remediation. However, the Current Owners
7 indicated that they wished to complete the cleanup activities themselves. As a result, on
8 September 30, 2003, the Department and the Current Owners entered into a Consent Order
9 (#HSA-CO 03/04-035). Pursuant to the Consent Order, the Current Owners would undertake the
10 remediation identified in the workplan, and the Department would oversee those activities. The
11 Current Owners agreed to pay for current and future oversight costs, and to negotiate the
12 Department's past costs concurrently with the implementation of the Consent order.

13 21. On December 22, 2005, the Department and the Current Owners entered into a
14 Settlement Agreement and Consent Order that ordered the Current Owners to pay \$92,000.00
15 over a four-year term in monthly installments of \$1533.33. Additionally, the Current Owners
16 agreed to remove the concrete surface in the building located at 10323 Pearmain Street and to
17 conduct confirmatory sampling. To date, the Department has received twelve monthly payments
18 from the Current Owners in the amount of \$1533.33 each, totaling \$18,399.96.

19 22. The Current Owners submitted a Summary of Completion of work to the
20 Department on April 21, 2006. On May 10, 2006, the Department issued a certification letter
21 acknowledging that no further actions were required at the Pearmain Site.

22 23. The Department notified representatives of the Reitman Estate – both Audrey
23 Berkson, Executrix, and Benjamin Warwick, attorney for the Estate – of the settlement with the
24 Current Owners by forwarding both individuals copies of the Notice of Intent to Enter a
25 Settlement that had been published in the California Regulatory Notice Register.

26 24. The Department then requested, by letter dated May 10, 2006, to meet with
27 representatives of the Reitman Estate to discuss a settlement for the remaining costs incurred at
28 the Pearmain Site.

1 34. The Department's response actions include emergency cleanup; removal of
2 containers and debris; decontamination of structures and off-site disposal of contaminated debris
3 and decontamination water; implementation of a RAW; and oversight of remedial activities by
4 the Current Owners.

5 35. Response actions were initiated in 1997 and continued until the Department
6 issued a Summary of Completion in 2006. Therefore, this complaint is timely under section
7 112(d) of CERCLA, 42 U.S.C. § 9612(d) and 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

8 36. Defendant Audrey Berkson, Executrix of the Reitman Estate, is a "person" within
9 the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

10 37. Defendant Estate of Reitman is a "person" within the meaning of section 101(21)
11 of CERCLA, 42 U.S.C. § 9601(21). *Castlerock Estates, Inc. v. Estate of Markham*, 871 F.
12 Supp. 360, 364 (N.D. Cal. 1994); *Bowen Engineering v. Estate of Reeves*, 799 F. Supp. 467, 475
13 (D.N.J. 1992).

14 38. Defendant Audrey Berkson, as Executrix of the Estate of Reitman, which owned
15 the Pearmain Site at the time of release, is a "person who at the time of disposal of any hazardous
16 substance owned or operated" the Pearmain Site within the meaning of sections 101(20)(A) and
17 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20)(A), 9607(a)(2).

18 39. Defendant Estate of Reitman, which owned the Pearmain Site at the time of
19 release, is a "person who at the time of disposal of any hazardous substance owned or operated"
20 the Pearmain Site within the meaning of sections 101(20)(A) and 107(a)(2) of CERCLA, 42
21 U.S.C. §§ 9601(20)(A), 9607(a)(2). *Castlerock*, 871 F. Supp. at 364; *Bowen*, 799 F. Supp. at
22 475.

23 40. Defendant Audrey Berkson is jointly and severally liable without regard to fault to
24 the State of California under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in an amount not
25 less than \$285,061.77 for all past and future response costs incurred by the Department at the
26 Pearmain Site.

27 41. Defendant Estate of Reitman is jointly and severally liable without regard to fault
28 to the State of California under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in an amount

1 not less than \$285,061.77, for all past and future response costs incurred by the Department at the
2 Pearmain Site.

3 PRAYER FOR RELIEF

4 WHEREFORE, Plaintiff prays that this Court enter judgment against Defendants as
5 follows:

6 For a judgment that Audrey Berkson, Executrix of the Estate of Reitman, and the
7 Estate of Reitman, are jointly and severally liable to the State of California, without regard to
8 fault for all response costs incurred, which costs, to date, total an amount not less than
9 \$285,061.77;

10 For costs of this suit;

11 For attorneys fees;

12 For other such relief as the Court deems just and appropriate.

13
14
15 Dated: May 25, 2007

16 Respectfully submitted,

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